

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PHOENIX BEVERAGES, INC., RODB
LLC, WINDMILL DISTRIBUTING
COMPANY, L.P., UP FROM THE ASHES,
INC., and other affiliated companies of
PHOENIX BEVERAGES, INC.,
Plaintiffs,

v.

EXXON MOBIL CORPORATION,
EXXONMOBIL RESEARCH AND
ENGINEERING COMPANY and EXXON
MOBIL CORPORATION,
Defendants.

Civil Action No. 1:12-CV-03771 (PKC) (JO)

EXXON MOBIL CORPORATION and
EXXON MOBIL CORPORATION,
Third-Party Plaintiffs,

v.

ACE WASTE OIL, INC.; et al.,
Third-Party Defendants.

**ANSWER OF THIRD-PARTY
DEFENDANT NOVELIS
CORPORATION TO THIRD-PARTY
COMPLAINT OF EXXON MOBIL
CORPORATION**

Third-Party Defendant Novelis Corporation (f/k/a Alcan Aluminum Corporation)
(hereinafter "Novelis"), by and through counsel, hereby answers the Third-Party Complaint of
Exxon Mobil Corporation ("Exxon" or "Third-Party Plaintiff") as follows:

INTRODUCTION

1. Novelis admits only that the statements set forth in Paragraph 1 of the Third-Party Complaint are restatements of the Plaintiffs' Complaint. Paragraph 1 requires no response from Novelis. If a response is required Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 1 of the Third-Party Complaint and, therefore, denies said allegations.

2. Novelis admits only that the statements set forth in Paragraph 2 (subparts 'a' through 'e') of the Third-Party Complaint are restatements of the Plaintiffs' Complaint. Paragraph 2 requires no response from Novelis. If a response is required Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 2 of the Third-Party Complaint and, therefore, denies said allegations.
3. Novelis admits only that the statement set forth in Paragraph 3 of the Third-Party Complaint is a summary of Exxon's Answer to Plaintiffs' Complaint. Paragraph 3 requires no response from Novelis. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statement set forth in Paragraph 3 of the Third-Party Complaint and, therefore, denies said allegations.
4. Novelis admits only that the statements set forth in Paragraph 4 of the Third-Party Complaint are a summary of Exxon's Third-Party Complaint. Paragraph 4 requires no response from Novelis. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 4 of the Third-Party Complaint and, therefore, denies said allegations.
5. Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 5 of the Third-Party Complaint and, therefore, denies said allegations.

THIRD-PARTY DEFENDANTS

6. Novelis admits the allegation contained in Paragraph 6 of the Third-Party Complaint that it was not named as a defendant in the Plaintiffs' Complaint. Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in

Paragraph 6 of the Third-Party Complaint as such relate to other Third-Party Defendants and, therefore, denies said allegations.

7. Novelis denies the allegations set forth in Paragraph 7 of the Third-Party Complaint. Novelis denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Third-Party Complaint as such relate to other Third-Party Defendants and, therefore, denies said allegations.
8. Novelis admits only that the statements set forth in Paragraph 8 of the Third-Party Complaint are a summary of Exxon's Third-Party Complaint. Paragraph 8 requires no response from Novelis. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 8 of the Third-Party Complaint and, therefore, denies said allegations.
9. Paragraph 9 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies the allegations set forth in Paragraph 9 of the Third-Party Complaint.
10. Novelis denies the allegations set forth in Paragraph 10 of the Third-Party Complaint. Novelis denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Third-Party Complaint as such relate to other Third-Party Defendants and, therefore, denies said allegations.
11. Paragraph 11 requires no response from Novelis. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 11 of the Third-Party Complaint and, therefore, denies said allegations.

12. Paragraph 12 requires no response from Novelis. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 12 of the Third-Party Complaint and, therefore, denies said allegations.

JURISDICTION AND VENUE

13. Novelis admits the jurisdictional allegations contained in Paragraph 13 of the Third-Party Complaint.
14. Novelis admits the venue allegations contained in Paragraph 14 of the Third-Party Complaint.

COUNT I

Contribution Claim For Relief Under Section 107(a) of CERCLA

15. Novelis repeats and re-alleges each and every admission, denial, and denial of knowledge and information set forth in Paragraphs 1 through 14 as if fully set forth herein.
16. Paragraph 16 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 16 of the Third-Party Complaint and, therefore, denies said allegations.
17. Paragraph 17 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 17 of the Third-Party Complaint and, therefore, denies said allegations.
18. Paragraph 18 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies knowledge or information

sufficient to form a belief as to the truth of the statements set forth in Paragraph 18 of the Third-Party Complaint and, therefore, denies said allegations.

19. Novelis denies the allegations set forth in Paragraph 19 of the Third-Party Complaint. Novelis denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Third-Party Complaint as such relate to other Third-Party Defendants and, therefore, denies said allegations.
20. Paragraph 20 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 20 of the Third-Party Complaint and, therefore, denies said allegations.
21. Paragraph 21 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 21 of the Third-Party Complaint and, therefore, denies said allegations.
22. Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 22 of the Third-Party Complaint and, therefore, denies said allegations.
23. Paragraph 23 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 23 of the Third-Party Complaint and, therefore, denies said allegations.
24. Paragraph 24 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies knowledge or information

sufficient to form a belief as to the truth of the statements set forth in Paragraph 24 of the Third-Party Complaint and, therefore, denies said allegations.

25. Paragraph 25 requires no response from Novelis. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 25 of the Third-Party Complaint and, therefore, denies said allegations.

COUNT II

Contribution Claim For Relief Under Section 113 of CERCLA

26. Novelis repeats and re-alleges each and every admission, denial, and denial of knowledge and information set forth in Paragraphs 1 through 25 as if fully set forth herein.
27. Novelis admits only that the statement set forth in Paragraph 27 of the Third-Party Complaint is a summary of the Plaintiffs' Complaint. Paragraph 27 requires no response from Novelis. If a response is required Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 27 of the Third-Party Complaint and, therefore, denies said allegations.
28. Paragraph 28 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies the allegations. Novelis denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 of the Third-Party Complaint as such relate to other Third-Party Defendants and, therefore, denies said allegations.

COUNT III

Claim For Declaratory Judgment Under Section 113(g)(2) of CERCLA

29. Novelis repeats and re-alleges each and every admission, denial, and denial of knowledge and information set forth in Paragraphs 1 through 28 as if fully set forth herein.
30. Paragraph 30 requires no response from Novelis. If a response is required, Novelis denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 30 of the Third-Party Complaint and, therefore, denies said allegations.
31. Paragraph 31 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies the allegations set forth in Paragraph 31 of the Third-Party Complaint. Novelis denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 31 of the Third-Party Complaint as such relate to other Third-Party Defendants and, therefore, denies said allegations.

COUNT IV

Contribution Claim For Relief Pursuant to N.Y. C.P.L.R. Section 1401

32. Novelis repeats and re-alleges each and every admission, denial, and denial of knowledge and information set forth in Paragraphs 1 through 31 as if fully set forth herein.
33. Paragraph 33 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies the allegations set forth in Paragraph 33 of the Third-Party Complaint. Novelis denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 of the

Third-Party Complaint as such relate to other Third-Party Defendants and, therefore, denies said allegations.

34. Paragraph 34 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies the allegations. Novelis denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34 of the Third-Party Complaint as such relate to other Third-Party Defendants and, therefore, denies said allegations.

35. Paragraph 35 of the Third-Party Complaint calls for a legal conclusion for which no response is required. If a response is required, Novelis denies the allegations set forth in Paragraph 35 of the Third-Party Complaint. Novelis denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 35 of the Third-Party Complaint as such relate to other Third-Party Defendants and, therefore, denies said allegations.

Novelis denies the Third-Party Plaintiff is entitled to the relief requested in the prayer for relief and otherwise denies any liability to the Third-Party Plaintiff. Novelis now sets forth its affirmative and other defenses as follows, but does not assume the burden of proof unless otherwise required by law:

FIRST DEFENSE

The Third-Party Complaint fails to state a claim against Novelis upon which relief can be granted.

SECOND DEFENSE

Suit upon all or part of the claims set forth in the Third-Party Complaint was not commenced within the time allowed by law. These claims therefore are barred by the applicable statute of limitations.

THIRD DEFENSE

The Third-Party Plaintiff has failed to join necessary or indispensable parties needed for the just adjudication of matters in controversy herein.

FOURTH DEFENSE

No causal relationship exists between the damages complained of by the Third-Party Plaintiff and the acts and/or omissions of Third-Party Defendant, Novelis, with respect to those matters complained of in the Third-Party Complaint.

FIFTH DEFENSE

This action is barred by the equitable doctrine of laches.

SIXTH DEFENSE

Any release or threatened release of a hazardous substance and any damages resulting therefrom at the site in question were caused solely by the actions and/or omissions of the Plaintiffs, Third-Party Plaintiffs or other third party (or parties) over which Novelis had no control, and not by any actions and/or omissions of Novelis.

SEVENTH DEFENSE

The substances or substances allegedly disposed of at the site in question by Novelis were not hazardous substances within the meaning of Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*

EIGHTH DEFENSE

No action and/or omission of Novelis was the actual or proximate cause of any release or threatened release of a hazardous substance or any damages resulting therefrom at the site in question.

NINTH DEFENSE

The Third-Party Plaintiff's costs of response are not necessary and are not consistent with the National Contingency Plan.

TENTH DEFENSE

The Third-Party Plaintiff is barred from seeking relief against Third Party Defendant, Novelis, under the doctrine of unclean hands.

WHEREFORE, having fully answered the Third-Party Complaint of Third Party Plaintiff Exxon Mobil Corporation, Novelis Corporation demands an order dismissing said complaint with prejudice, together with costs and such other and further relief as the justice of the cause may require.

JURY DEMAND

Third-Party Defendant, Novelis Corporation, hereby demands trial by jury as to all issues so triable.

Respectfully submitted,

/s/ _____

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Counsel for Novelis Corporation

Dated: October 25, 2013

CERTIFICATE OF SERVICE

I, Mark D. Kindt, hereby certify that on October 25, 2013, I electronically filed and served the above “Answer of Third Party Defendant Novelis Corporation to Third-Party Complaint of Exxon Mobil Corporation” with the Clerk of Court for the Eastern District of New York and on all counsel of record using the CM/ECF System.

Respectfully submitted,

/s/

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